

# House Study Bill 660

SENATE/HOUSE FILE \_\_\_\_\_  
BY (PROPOSED DEPARTMENT OF  
ELDER AFFAIRS BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to dependent adult abuse and dependent adult  
2 endangerment and providing penalties.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
4 TLSB 5110DP 80  
5 rh/pj/5

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1 1 Section 1. Section 235B.1, subsection 4, paragraph a,  
1 2 subparagraph (1), Code 2003, is amended to read as follows:  
1 3 (1) Advise the ~~director of human services and the~~  
~~1 4 administrator of the division of child and family services of~~  
~~1 5 the department of human services regarding departments charged~~  
~~1 6 with the responsibility of addressing dependent adult abuse.~~  
1 7 Sec. 2. Section 235B.2, subsection 4, Code 2003, is  
1 8 amended to read as follows:  
1 9 4. "Dependent adult" means a person eighteen years of age  
1 10 or older who is unable to protect the person's own interests  
1 11 or unable to adequately perform or obtain services necessary  
1 12 to meet essential human needs, as a result of a physical or  
1 13 mental condition which requires assistance from another, or a  
~~1 14 person eighteen years of age or older who is certified for~~  
~~1 15 residency in a health care facility pursuant to chapter 135C,~~  
1 16 or as defined by departmental rule.  
1 17 Sec. 3. Section 235B.3, subsection 2, Code Supplement  
1 18 2003, is amended to read as follows:  
1 19 2. All of the following persons shall report suspected  
1 20 dependent adult abuse to the department:  
1 21 ~~a. A social worker.~~  
1 22 ~~b. A certified psychologist.~~  
1 23 ~~c. a. A person who, in the course of employment, examines,~~  
1 24 attends, counsels, or treats a dependent adult and reasonably  
1 25 believes the dependent adult has suffered abuse, including:  
1 26 (1) A member of the staff of a community mental health  
1 27 center, a member of the staff of a hospital, a member of the  
1 28 staff or employee of a public or private health care facility  
1 29 as defined in section 135C.1.  
1 30 (2) A peace officer.  
1 31 (3) An in-home homemaker=home health aide.  
1 32 (4) An individual employed as an outreach person.  
1 33 (5) A health practitioner, as defined in section 232.68.  
1 34 (6) A member of the staff or an employee of a supported  
1 35 community living service, sheltered workshop, or work activity  
2 1 center.  
2 2 ~~(7) A social worker.~~  
2 3 ~~(8) A certified psychologist.~~  
2 4 ~~d. A person who performs inspections of elder group homes~~  
~~2 5 for the department of inspections and appeals and a resident~~  
~~2 6 advocate committee member assigned to an elder group home~~  
~~2 7 pursuant to chapter 231B.~~  
2 8 ~~b. A licensed funeral director.~~  
2 9 Sec. 4. Section 235B.3, Code Supplement 2003, is amended  
2 10 by adding the following new subsection:  
2 11 NEW SUBSECTION. 3A. An employee of a financial  
2 12 institution may report cases of suspected financial  
2 13 exploitation of a dependent adult to the department.  
2 14 Sec. 5. Section 235B.18, subsection 1, Code 2003, is  
2 15 amended to read as follows:  
2 16 1. If the department reasonably determines that a  
2 17 dependent adult is a victim of dependent adult abuse and lacks  
2 18 capacity to consent to the receipt of protective services, the  
2 19 department may petition the district court in the county in  
~~2 20 which the dependent adult resides~~ for an order authorizing the  
2 21 provision of protective services. The petition shall allege  
2 22 specific facts sufficient to demonstrate that the dependent  
2 23 adult is in need of protective services and lacks capacity to

2 24 consent to the receipt of services.

2 25 Sec. 6. Section 235B.19, subsection 1, Code 2003, is  
2 26 amended to read as follows:

2 27 1. If the department determines that a dependent adult is  
2 28 suffering from dependent adult abuse which presents an  
2 29 immediate danger to the health or safety of the dependent  
2 30 adult, that the dependent adult lacks capacity to consent to  
2 31 receive protective services, and that no consent can be  
2 32 obtained, the department may petition the district court with  
2 33 probate jurisdiction in the county in which the dependent  
2 34 adult resides for an emergency order authorizing protective  
2 35 services.

3 1 Sec. 7. Section 235B.19, subsection 6, unnumbered  
3 2 paragraph 1, Code 2003, is amended to read as follows:

3 3 The department, upon finding that dependent adult abuse has  
3 4 occurred and is either ongoing or is likely to reoccur, may  
3 5 petition the district court in the county in which the  
3 6 dependent adult resides for injunctive relief against the  
3 7 alleged perpetrator. The petition shall conform to the  
3 8 requirements of subsection 2 and shall specify the relief  
3 9 sought. Upon finding that dependent adult abuse has occurred  
3 10 and that the abuse is either ongoing or likely to reoccur, the  
3 11 court may also enter temporary orders as may be appropriate to  
3 12 third persons enjoining them from specific conduct. The  
3 13 orders may include temporary restraining orders which impose  
3 14 criminal sanctions if violated. In instances of self-denial  
3 15 of critical care, the court may enter temporary orders  
3 16 authorizing the provision of support services to the dependent  
3 17 adult. Temporary orders entered pursuant to this subsection  
3 18 shall remain in effect for a period of thirty days from the  
3 19 date of entry unless extended for good cause. Third parties  
3 20 enjoined under this subsection shall be provided notice of the  
3 21 court order in accordance with court rules. The court may  
3 22 enjoin third persons from any of the following:

3 23 Sec. 8. NEW SECTION. 726.9 DEPENDENT ADULT ENDANGERMENT.

3 24 1. A caretaker commits dependent adult endangerment when  
3 25 the caretaker through willful or negligent acts or omissions  
3 26 does any of the following:

3 27 a. Creates a substantial risk to a dependent adult's  
3 28 physical, mental, or emotional health or safety.

3 29 b. Uses unreasonable force, torture, or cruelty that  
3 30 results in bodily injury, or that is intended to cause serious  
3 31 injury.

3 32 c. Causes bodily injury to, unreasonably confines,  
3 33 unreasonably punishes, or assaults a dependent adult.

3 34 d. Evidences unreasonable force, torture, or cruelty that  
3 35 causes substantial mental or emotional harm to a dependent  
4 1 adult.

4 2 e. Deprives a dependent adult of necessary food, clothing,  
4 3 shelter, health care, or supervision when the person is  
4 4 reasonably able to make the necessary provisions and which  
4 5 deprivation substantially harms the dependent adult.

4 6 f. Permits the continuing physical or sexual abuse of a  
4 7 dependent adult.

4 8 g. With or against a dependent adult, commits a sexual  
4 9 offense under chapter 709 or section 726.2.

4 10 h. Abandons the dependent adult to fend for the dependent  
4 11 adult's own self, knowing that the dependent adult is unable  
4 12 to do so.

4 13 i. Exploits the dependent adult by the act or process of  
4 14 taking financial resources or property from the dependent  
4 15 adult without the informed consent of the dependent adult,  
4 16 including by theft, undue influence, harassment, duress,  
4 17 deception, false representation, or false pretense.

4 18 2. A caretaker who intentionally commits dependent adult  
4 19 endangerment resulting in serious or bodily injury to a  
4 20 dependent adult is guilty of a class "C" felony.

4 21 3. A caretaker who recklessly commits dependent adult  
4 22 endangerment resulting in serious or bodily injury to a  
4 23 dependent adult is guilty of a class "D" felony.

4 24 4. A caretaker who commits dependent adult endangerment  
4 25 not resulting in serious or bodily injury to a dependent adult  
4 26 is guilty of an aggravated misdemeanor.

4 27 5. A caretaker who commits dependent adult endangerment by  
4 28 exploiting a dependent adult by the act or process of taking  
4 29 financial resources or property without the informed consent  
4 30 of the dependent adult is guilty of a class "D" felony.

4 31 6. A caretaker alleged to have committed a violation of  
4 32 this section shall be charged with the respective offense  
4 33 cited, unless a charge may be brought based upon a more  
4 34 serious offense, in which case the charge of the more serious

4 35 offense shall supercede the less serious charge.  
5 1 7. For the purposes of this section, "dependent adult"  
5 2 means dependent adult as defined in section 235B.2 and  
5 3 "caretaker" means a caretaker as defined in section 235B.2.  
5 4 Sec. 9. Section 235B.20, Code 2003, is repealed.

5 5 EXPLANATION

5 6 This bill relates to dependent adult abuse.  
5 7 The bill provides that the dependent adult abuse advisory  
5 8 council is to advise not only the director of human services  
5 9 and the administrator of the division of child and family  
5 10 services regarding dependent adult abuse, but is to advise the  
5 11 departments charged with addressing dependent adult abuse.

5 12 The bill defines "dependent adult" to include a person 18  
5 13 years of age or older who is certified for residency in a  
5 14 health care facility or as defined by departmental rule.

5 15 The bill specifies that the persons who are required to  
5 16 report suspected dependent adult abuse do not include all  
5 17 social workers and certified psychologists, but only those  
5 18 social workers and certified psychologists who, in the course  
5 19 of employment, examine, attend, counsel, or treat a dependent  
5 20 adult and who reasonably believe the dependent adult has  
5 21 suffered abuse. The bill eliminates persons who perform  
5 22 inspections of elder group homes and resident advocate  
5 23 committee members assigned to elder group homes from the list  
5 24 of persons required to report suspected dependent adult abuse.  
5 25 The bill adds licensed funeral directors to this list. In  
5 26 addition, the bill specifies that an employee of a financial  
5 27 institution may report cases of suspected financial  
5 28 exploitation to the department of human services.

5 29 The bill specifies that a petition for an order authorizing  
5 30 the provision of protective services or authorizing an  
5 31 emergency order for protective services is to be filed with  
5 32 the district court in the county in which the dependent adult  
5 33 resides. The bill also provides that if the department of  
5 34 human services finds that dependent adult abuse has occurred  
5 35 and is ongoing or likely to reoccur, the department may  
6 1 petition the court for injunctive relief against the alleged  
6 2 perpetrator and directs that the court may enter temporary  
6 3 orders as appropriate. The bill eliminates the court's  
6 4 discretion to include temporary restraining orders which  
6 5 impose criminal sanctions. The bill also provides that if the  
6 6 court enters a temporary order, the order remains in effect  
6 7 for 30 days unless extended for good cause. Third parties  
6 8 enjoined under these provisions are to be provided notice of  
6 9 the court order in accordance with court rules.

6 10 The bill eliminates a provision in Code chapter 235B  
6 11 relating to initiation of charges and penalties for dependent  
6 12 adult abuse, modifies the provision, and relocates it in Code  
6 13 chapter 726 (protection of the family and dependent persons),  
6 14 which is located in the criminal law portion of the Code.  
6 15 This provision has been retitled "dependent adult  
6 16 endangerment".

6 17 Under current law in Code section 235B.20, a caretaker who  
6 18 intentionally commits dependent adult abuse that results in  
6 19 serious injury to the dependent adult is guilty of a class "C"  
6 20 felony and if the abuse was committed in a reckless manner,  
6 21 the person is guilty of a class "D" felony. Under current  
6 22 provisions, a caretaker who intentionally commits dependent  
6 23 adult abuse that results in physical injury is guilty of a  
6 24 class "C" felony and if the abuse was committed in a reckless  
6 25 manner, the person is guilty of an aggravated misdemeanor.  
6 26 Additionally, under current provisions, if a caretaker  
6 27 exploits a dependent adult, and the value of the property,  
6 28 assets or resources exceeds \$100, the person is guilty of a  
6 29 class "D" felony, and if the value is \$100 or less, the person  
6 30 is guilty of a simple misdemeanor.

6 31 Under the bill, a caretaker who commits dependent adult  
6 32 endangerment is subject to criminal penalties. Under the  
6 33 bill, a caretaker commits dependent adult endangerment if the  
6 34 caretaker through willful or negligent acts or omissions does  
6 35 any of the following:

- 7 1 1. Creates a substantial risk to a dependent adult's  
7 2 physical, mental, or emotional health or safety.
- 7 3 2. Uses unreasonable force, torture, or cruelty that  
7 4 results in bodily injury, or that is intended to cause serious  
7 5 injury.
- 7 6 3. Causes bodily injury to, unreasonably confines,  
7 7 unreasonably punishes, or assaults a dependent adult.
- 7 8 4. Evidences unreasonable force, torture, or cruelty, that  
7 9 causes substantial mental or emotional harm to a dependent  
7 10 adult.

7 11 5. Deprives a dependent adult of necessary food, clothing,  
7 12 shelter, health care, or supervision when the caretaker is  
7 13 reasonably able to make the necessary provisions and which  
7 14 deprivation substantially harms the dependent adult.

7 15 6. Permits the continuing physical or sexual abuse of a  
7 16 dependent adult.

7 17 7. With or against a dependent adult commits a sexual  
7 18 offense under Code chapter 709 or Code section 726.2.

7 19 8. Abandons the dependent adult to fend for the dependent  
7 20 adult's own self, knowing that the dependent adult is unable  
7 21 to do so.

7 22 9. Exploits a dependent adult by the act or process of  
7 23 taking financial resources or property from the dependent  
7 24 adult without the informed consent of the dependent adult,  
7 25 including by theft, undue influence, harassment, duress,  
7 26 deception, false representation, or false pretense.

7 27 The bill provides that if a caretaker intentionally commits  
7 28 dependent adult endangerment that results in serious or bodily  
7 29 injury, the person is guilty of a class "C" felony, and if the  
7 30 endangerment was committed in a reckless manner, the person is  
7 31 guilty of a class "D" felony. If a person commits dependent  
7 32 adult endangerment that does not result in serious or bodily  
7 33 injury to a dependent adult, the person is guilty of an  
7 34 aggravated misdemeanor. A person who exploits a dependent  
7 35 adult is guilty of a class "D" felony.

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